

SEP 14 2006

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PAUL WINQUIST,

Defendant - Appellant.

No. 05-10596

D.C. No. CR-04-00013-JCM

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding

Submitted September 11, 2006^{**}

Before: PREGERSON, T.G. NELSON and GRABER, Circuit Judges.

Paul Winquist appeals from the 24-month sentence and order of restitution imposed following his guilty-plea conviction for nine counts of aiding and

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

abetting and mail fraud, in violation of 18 U.S.C. §§ 2 and 1341. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Winqvist contends that the district erred by not making a determination regarding his ability to pay restitution. Because Winqvist was convicted of a crime of fraud under Title 18 of the United States Code, restitution was mandatory under 18 U.S.C. § 3663A and no determination of Winqvist's financial situation was required. *See United States v. Grice*, 319 F.3d 1174, 1178 (9th Cir. 2003) (per curiam).

Winqvist challenges the calculation of loss as it was used both to calculate his sentence under the advisory Guidelines and to determine the restitution order. We conclude that the district court did not err in relying on the affidavits of the victims in determining the amount of loss and the restitution order. *See* 18 U.S.C. § 3664; *United States v. Peyton*, 353 F.3d 1080, 1090 n.11 (9th Cir. 2003); *United States v. Lawrence*, 189 F.3d 838, 846 (9th Cir. 1999).

Finally, Winqvist contends the district court erred by failing to consider the sentencing factors under 18 U.S.C. § 3553(a). A review of the record establishes that the district did take into account the appropriate sentencing factors and that the sentence imposed was not unreasonable. *See United States v. Plouffe*, 445

F.3d 1126, 1131 (9th Cir. 2006); *United States v. Knows His Gun*, 438 F.3d 913, 918 (9th Cir. 2006).

AFFIRMED.